## **EXHIBIT 5**

## UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Alexandria Division

AUDIO MPEG, INC.,	)
Plaintiff,	)
v.	) Case No.: 1:05 cv 565 CMH/LO
THOMSON INC., et al.,	
Defendants.	<u> </u>

## AFFIDAVIT OF MICHAEL O'HARA IN SUPPORT OF THOMSON S.A.'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT FOR LACK OF SUBJECT MATTER AND PERSONAL JURISDICTION

- I, Michael O'Hara, on oath hereby depose and state:
- 1. I currently serve as Thomson Inc.'s President. I have served as President for the last 3 years and have worked for Thomson Inc. and its predecessors for 23 years.
- 2. Based on my position and experience, I am extremely familiar with the corporate structure, activities, and finances of Thomson Inc.
- 3. Thomson Inc. is a Delaware corporation with its principal place of business in Indianapolis, Indiana. Thomson Inc. is a wholly owned subsidiary of Thomson S.A. Thomson S.A. is incorporated under the laws of France and has its principal place of business in Boulogne-Billancourt, France.
- 4. Thomson Inc. and Thomson S.A. maintain separate corporate structures, including separate boards, separate management, and separate employees.
  - 5. Thomson Inc. also maintains finances separate from those of Thomson Inc.
  - 6. Thomson Inc. controls its day-to-day activities.

- 7. Thomson Inc. is responsible for the sales and marketing of products in the United States.
- 8. While Thomson S.A. is the registered owner of the domain names reacom and reaaudiovideo.com, Thomson Inc. controls the content and design of those web sites.
- 9. The content on the www.rca.com and www.rcaaudiovideo.com websites is posted by Thomson Inc.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 28, 2005.

By: Michael O'Hara

Title: President, Thomson Inc.